NEGLIGENCE—TRIAL—INSTRUCTIONS—LANGUAGE.—DEVINE v. NORTHWESTERN ELEVATED R. R., 107 N. E. (ILL.) 118.—*Held,* the words "due and proper care and caution," "negligence," and "due and ordinary care," used in instructions to the jury, are not misleading and need not be defined unless requested.

In negligence cases though the plaintiff may charge negligence in general terms, yet the instructions submitting negligence to the jury must be specific. *Schaaf v. St. Louis Box Co.,* 140 S. W. (Mo. App.) 1197. That is, the negligence charged in the instruction must be limited to the negligence alleged in declaration. *Presley v. Kinlock Telephone Co.,* 158 Ill. App. 220; *Smith v. Illinois Collieries Co.,* 155 Ill. App. 148. The instruction must specify what the negligent acts were. *Raybourn v. Phillips,* 140 S. W. (Mo. App.) 977; *Clancy v. N. Y., N. H. & H. R. R.,* 112 N. Y. Supp. 541. And it must not limit the necessity for the exercise of ordinary care to the precise time when injury occurred. *Goldblatt v. Brocklebank,* 166 Ill. App. 315. It must never make the juror the standard of what is a prudent person. *City of Americus v. Johnson,* 2 Ga. App. 378; 58 S. E. 518. As to the question whether the court must define the word "negligence" or "ordinary care" in its charge, there is some conflict of authority. Some cases hold that such definition is *not* necessary. *B. & N. O. R. R. v. Barry,* 98 Tex. 248; *Sweeney v. Kansas City R. R.,* 150 Mo. 385; *O'Leary v. Kansas City,* 127 Mo. App. 77. Others hold the contrary view. *May v. Hahn,* 22 Tex. Civ. App. 365; *Covington Saw Mill Co. v. Drexilins,* 120 Ky. 493. In the case of *Birmingham Light & Power Co. v. Jackson,* 9 Ala. App. 588, 63 So. 782, it was held that the lower court erred in refusing to define "wantonness" where the complaint charged "wantonness" and there was evidence to sustain such charge. But it has been held that it is not necessary to use the words "negligent" or "negligence" at all where the instruction submits a series of acts amounting to negligence as a matter of law and which directs the jury to find for the plaintiff on finding that those acts were committed. *Prash v. Wabash R. R.,* 132 S. W. (Mo. App.) 57; *Bolger v. Kansas City Material Co.,* 157 S. W. (Mo. App.) 87. As a practical matter it would seem that the words "negligence" and "ordinary care" conveyed a definite enough meaning to most minds to suffice without judicial definition.

PUBLIC SERVICE COMPANIES—PROPERTY—FRANCHISE.—PUBLIC SERVICE GAS CO. v. PUBLIC UTILITY COM'RS ET AL., 92 ATL. (N. J.) 606.—*Held,* in determining the total valuation of a public service company to fix the rate at which it must sell gas to enable it to earn a reasonable income on its property, the franchise of the corporation must be included in the property of the corporation. Walker, Ch. J., Trenchard, Kalisch, and Terhume, JJ., *dissenting.*

Corporate franchises are, by the great weight of authority, property of the corporation. *New Orleans City etc. R. R. v. New Orleans,* 143 U. S. 192; *San José Gas Co. v. January,* 57 Cal. 614; *People v. Deehan,* 153 N. Y. 528. *Contra, Bank v. Hines,* 3 Oh. St. 1. Being property, it cannot

be taken or impaired, even for a public use, without just compensation. *Coney Island etc., R. R. Co. v. Kennedy,* 48 N. Y. Supp. 825; *Wilmington & W. R. Co. v. Reid,* 13 Wall. 264. It is not property, however, which is liable to seizure and sale. *Stein v. Mobile,* 17 Ala. 234. *Contra, People v. O'Brien,* 111 N. Y. 1. Neither does it pass to the general assignee for creditors. *Fertsom v. Hay,* 122 Ill. 293. It is generally recognized that corporate franchises are taxable by the common law or have been made so by statute. *Edison Electric Illum. Co. v. Spokane,* 22 Wash. 168; *New Orleans v. New Orleans etc. Co.,* 40 La. Ann. 587; *Fond du Lac Water Co. v. Fond du Lac,* 82 Wis. 322. On principle, if the taxing power has the right to tax the corporate franchise as property of the corporation, the corporation should in turn have the right to insist that the franchise be reckoned as property in determining at what rate the corporation must sell its gas in order to earn a fair income from its property.

TELEGRAPHS AND TELEPHONES—DEATH MESSAGES—MENTAL ANGUISH.—ALSBROOK V. WESTERN UNION TEL. CO., 150 N. W. (IOWA) 75.—*Held,* delay in the transmission of a message announcing the death of plaintiff's mother warrants recovery for mental anguish suffered by the addressee because of the delay in reaching the place of the funeral and meeting his relatives there as early as he would otherwise have done.

The usual damages recoverable in case of breach of contract are limited to pecuniary and property loss and there can be no recovery for mental anguish. *Hall v. Jackson,* 24 Colo. App. 225. A well-recognized exception is the case of breach of contract to marry where damages recoverable may include full compensation for the pain, mortification and wounded feelings of the plaintiff. *Liese v. Meyer,* 143 Mo. 547. In the case of torts, the general rule is that mental suffering can be recovered for only when it is the result of bodily injury. *Samarra v. Allegheny Valley St. Ry. Co.,* 238 Pa. 469. But recovery may be had for mental anguish in case of willful or wanton wrongs or those committed with malice and intention to cause mental distress. *Small & Co. v. Lonergan,* 81 Kans. 48. The doctrine adopted by the principal case that recovery may be had for mental anguish due to the neglect and delay of the death message represents the minority view which was first promulgated in Texas. *So Relle v. Western Union Tel. Co.,* 55 Tex. 308; *Western Union Tel. Co. v. Crumpton,* 138 Ala. 632. And a few jurisdictions have expressly recognized this doctrine by statute. *Western Union Tel. Co. v. Shenep,* 83 Ark. 476; *Simmons v. W. U. Tel. Co.,* 63 S. C. 425. But in order to render the telegraph company liable, the company must have notice from the language of the message, or otherwise, that by reason of its default, such damages would be likely to result. *Williams v. Western Union Tel. Co.,* 136 N. C. 82. The great weight of authority is that there can be no recovery for mental anguish, where, due to the telegraph company's negligence in delivering the message, the plaintiff is prevented from seeing a near relative before death or from being present at the funeral. *Western Union Tel. Co. v. Halton,* 71 Ill. App. 63; *Austin v. Western Union Tel. Co.,* 42 N. Y. Supp. 1109.